



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/627,258

07/25/2003

Paul L. Popelka

5760-12600

7593

35690

7590

10/31/2006

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
700 LAVACA, SUITE 800
AUSTIN, TX 78701

EXAMINER

LE, UYEN T

ART UNIT

PAPER NUMBER

2163

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,258

Applicant(s)

POPELKA ET AL.

Examiner

Uyen T. Le

Art Unit

2163

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11 September 2006 have been fully considered but they are not persuasive.

Applicant argues that claims 1-10 meet the requirements of 35 U.S.C. 101 because the specification very clearly defines a node as comprising a computer system. In response, the examiner disagrees. The sections pointed to by applicant as support for a definition of a node merely mention that a computer system is referred to as a node. Such a reference is not considered formal definition of a node. Note that the preamble of claim 1 recites a cluster. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Since the claimed "cluster" which include a plurality of nodes cannot be categorized as a process, machine, manufacture or composition of matter, it is directed to non-statutory subject matter.

Applicant argues that the examiner's remark of "configured to does not require the nodes to perform any function" has nothing to do with the section 101 rejection itself. In response, the examiner clarifies that the remark is to point out to the non-functional descriptive aspect of the claimed subject matter.

Applicant cited Merriam Webster's Collegiate Dictionary to show that "configured to" requires that the nodes have a structural and functional set up to realize the various operations described. In response, since the claimed nodes are not formally defined in the specification as a computer system, there could be no structural and functional set up as alleged by the applicant.

Regarding claims 11, applicant argues "it is clear that a service group is an entity managed by a node and that there is nothing even remotely unclear about this recitation nor is anything unclear about the relationship of nodes and service groups". In response, the examiner disagrees. There is no such clarity. Claim 11 recites a method. However, there is nothing in the claim language that indicates that a service group is an entity managed by a node as alleged by the applicant.

Applicant further argues that the service group fails over from one node to another. Again, because the relationship of node and service group is nebulous, the examiner maintains that the language of claims 3 and 11 is ambiguous.

Regarding claims 20, 27, 33, applicant cited an example of claim 20 reciting "each of the plurality of service groups including at least one file system". The examiner agrees that the service groups as recited in claim 20 include at least one file system. However, the examiner strongly disagrees with applicant's remark that "since the relationship of service group and node is clear, the relationship of file system and node is also clear". There is no such clarity.

Regarding claims 1, 2, applicant admitted that the related art section does describe a client list but argues that the server also maintains a list in nonvolatile

memory of which clients have locks in any of the file systems served by that server and the list can only be used when that particular server is rebooted. In response, claims 1 and 2 as written read on the related art since they do not require the client list to be usable when a particular server is not rebooted.

For all the reasons stated above, all rejections are maintained and hereby repeated.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 recites a cluster comprising of purely descriptive material or at best components that seem to be software per se. Note that a cluster cannot be categorized in any statutory category.

Art rejection is applied in anticipation of applicant amending the claims to place them in one of the statutory class.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-37 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such

omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are:

- at claim 11, the nodes at lines 6-7 do not seem to relate to the service group of lines 2-5. Furthermore, the language of claim 3, lines 1-3, claim 11, lines 6, 7 is ambiguous. What fails over what? Besides the claim language of "configured to" does not require any actual function to be performed by any node
- at claim 3, it is not clear what is failing over what
- at claims 20, 27, 33, it is not clear how the file systems, nodes and service groups are related and what is failing over what.

Art rejection is not being applied to claims 3-37 because the limitations cannot be ascertained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1, 2 are rejected under 35 U.S.C. 102(a) as being anticipated by the related art of applicant's specification at pages 1-3.

Regarding claim 1, the claimed cluster merely comprises a plurality of file systems included in one of a plurality of service groups and a plurality of nodes, thus is met by any network file system of related art at page 1. The cluster of related art clearly

has nodes configured to perform (i), (ii) and (iii) since it is part of a network and allows lock recovery using client list (see pages 1-2).

Regarding claim 2, the related art clearly shows each of the plurality of client lists is stored in at least one of the one or more file systems included in the respective service group (see page 2).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mayhead et al (US 6,367,029) teach file server system tolerant to software and hardware failures.

Thekkath et al, "Frangipani: A Scalable Distributed File System", ACM 1997, pages 224-237.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen T. Le whose telephone number is 571-272-4021. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

25 October 2006



UYEN LE
PRIMARY EXAMINER